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IN THE  
**SUPREME COURT**  
OF THE  
**UNITED STATES**

OCTOBER TERM, 1963

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF  
CALIFORNIA, *Petitioner,*

v.

EVELYN KIRSCHNER, Administratrix of the Estate  
of ELLINOR GREEN VANCE, *Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME  
COURT OF THE STATE OF CALIFORNIA

**BRIEF FOR THE STATE OF WASHINGTON  
AS AMICUS CURIAE**

JOHN J. O'CONNELL,  
Attorney General,

STEPHEN C. WAY,  
Assistant Attorney General.

Office & Post Office Address: Temple of Justice, Olympia, Washington

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## INDEX

	<i>Page</i>
Cases cited .....	3
Statutes .....	3
Constitution .....	3
Interest of the State of Washington.....	6
Argument .....	7
Conclusion .....	10
Appendix .....	11

### CASES CITED

State ex rel. Bacich vs. Huse, 187 Wash. 75, 59 P. (2d) 1101 (1936) .....	7
Williamson vs. Lee Optical of Oklahoma, 348 US 483, 99 L. ed. 563, 75 S. Ct. 461 (1955) .....	10

### STATUTES

RCW 71.02.230 .....	11
RCW 71.02.330 .....	12
RCW 71.02.340 .....	12
RCW 71.02.350 .....	13
RCW 71.02.410 .....	13
RCW 72.23.120 .....	12

### CONSTITUTION

§ 6650 of California Welfare and Institutions Code .....	8
Washington State Constitution.....	7
14th Amendment of the Federal Constitution..	7

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**INTEREST OF THE STATE OF WASHINGTON**

The State of Washington has statutory provisions (set forth in full in the appendix) for the judicial imposition of liability for the payment of hospitalization costs at state hospitals, for persons committed thereto, by the mentally ill person's

estate, spouse, parents or children, or a combination thereof.

Provision is also made in the Laws of Washington for the payment for hospitalization costs of mentally ill persons by relatives, as well as the mentally ill person's estate, when voluntarily admitted to a state hospital for treatment.

Although, the statutory procedures differ between the State of Washington, and the petitioner, State of California, and other states appearing herein *amicus curiae*, the constitutional principal involved: i.e., the imposition of liability upon certain relatives of the mentally ill person for hospitalization costs of a mentally ill person at state hospitals, denies "equal protection of the law" contrary to the Constitution of the United States, applies with equal force upon the Laws of the State of Washington.

The State of Washington collects revenue for the costs of the care, treatment and support of mentally ill persons in its state hospitals annually in an amount in excess of two million dollars (\$2,000,000.00). This amount is, of course, far less than the actual cost of maintaining the programs for the mentally ill in the state hospitals, but, nevertheless Washington can ill-afford the loss of this source of revenue.

The State of Washington joins the petitioner, State of California, in urging the reversal by this court of the decision of the Supreme Court of the State of California, for that decision places in jeop-

ardy, the statutory provisions of this state for the payment by relatives of hospitalization costs of mentally ill persons. Additionally, we concur with the State of California, in the arguments of law as set forth in the brief of the Honorable Thomas C. Lynch, Attorney General of the State of California on behalf of the petitioner.

### ARGUMENT

#### **THE IMPOSITION BY STATUTE OF LIABILITY FOR THE PAYMENT OF THE COSTS OF CARE AND TREATMENT AT A STATE HOSPITAL UPON CERTAIN CLOSE RELATIVES OF THE MENTALLY ILL PERSON IS NOT AN ARBITRARY AND UNREASONABLE CLASSIFICATION CONSTITUTING A DENIAL OF EQUAL PROTECTION OF THE LAWS.**

In *State ex rel. Bacich vs. Huse*, 187 Wash. 75, 59 P. (2d) 1101 (1936) the Supreme Court of the State of Washington in commenting upon the special privileges and immunities provision of the State Constitution and of the equal protection clause of the 14th Amendment of the Federal Constitution stated:

“The aim and purpose of the special privileges and immunities provision of Art. I, § 12, of the state constitution and of the equal protection clause of the fourteenth amendment of the Federal constitution is to secure equality of treatment of all persons, without undue favor on the one hand or hostile discrimination on the other.

To comply with these constitutional provisions, legislation involving classifications must meet and satisfy two requirements: (1) The

legislation must apply alike to all persons within the designated class; and (2) reasonable ground must exist for making a distinction between those who fall within the class and those who do not.

Within the limits of these restrictive rules, the legislature has a wide measure of discretion, and its determination, when expressed in statutory enactment, cannot be successfully attacked, unless it is manifestly arbitrary, unreasonable, inequitable, and unjust. *State v. McFarland*, 60 Wash. 98, 110 Pac. 792; *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466; *Litchman v. Shannon*, 90 Wash. 186, 155 Pac. 783; *State v. Cannon*, 125 Wash. 515, 217 Pac. 18; *Northern Cedar Co. v. French*, 131 Wash. 394, 230 Pac. 837; *Garretson Co. v. Robinson*, 178 Wash. 601, 35 P. (2d) 504."

The statutes of Washington relating to the imposition of liability upon relatives for the costs of care and treatment of mentally ill persons in state hospitals, and § 6650 of the California Welfare and Institutions Code, apply with equal force upon all persons within the legislative classification. It is clear that a statute which is offensive to the equal protection clause of the Constitution of the United States must be unreasonable or arbitrary, and the classification is not unreasonable or arbitrary in its inclusion or exclusion features as long as there is some basis for the differentiation between classes included, as compared to those excluded from its operation, and if the differentiation bears a reasonable relation to the purposes to be accomplished by the statute.

The statutory provisions of the State of Washington and those of the State of California have an important and proper legislative purpose and function in aiding the state to, at least partially, defray the cost of caring for and treating those unfortunate citizens afflicted with mental illness. It is neither unreasonable, discriminatory nor arbitrary, for the legislatures of the states to require the imposition of liability upon close relatives for the payment of the costs of hospitalization of mentally ill persons, based upon financial ability to pay, such relatives being the ones directly benefiting from the restoration of the mentally ill person to good mental health.

The interest of relatives in the well being and restoration to mental health of a mentally ill person is greater, where there is a monetary obligation to pay for the care and treatment in a state hospital. This interest, evidencing itself by visitations to the patient, even though it may be prompted, at least in part, by pecuniary considerations, is a valuable adjunct to the treatment program of the state hospitals. Although, this interest in a mentally ill person by his relatives, would no doubt continue even though the monetary obligations were held constitutionally invalid, it would become less pronounced in many cases.

Statutes such as those at issue in the case at bar which may to some, seem unwise, improvident, or out of harmony with a particular school of thought, is a matter for legislative determination rather than

judicial consideration; and for protection against abuses by legislatures, people must resort to the polls, not to the courts. *Williamson vs. Lee Optical of Oklahoma*, 348 US 483, 99 L. ed. 563, 75 S. Ct. 461 (1955).

### CONCLUSION

The classification in the statutes in question, are not arbitrary nor unreasonable and are founded upon valid considerations of long standing and customary familial responsibility, and, it is not unreasonable nor constitutionally discriminatory to impose a statutory liability upon close relatives of a mentally ill person to pay state hospitalization costs based upon financial ability to do so.

Accordingly, it is respectfully submitted that the judgment of the Supreme Court of the State of California should be reversed.

Respectfully submitted,

JOHN J. O'CONNELL,  
Attorney General,

STEPHEN C. WAY,  
Assistant Attorney General.

**APPENDIX A**

**STATUTORY PROVISIONS**

**REVISED CODE OF WASHINGTON 71.02.230.**

Expenses—By whom payable. After a person has been found mentally ill under RCW 71.02.200, the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into the ability of the person's estate, or his spouse, parents or children, or any combination thereof, to pay the charges for transportation and hospitalization in a state hospital, detention pending proceedings, and court costs. If the court finds that the patient's estate or above named relatives, or combination thereof, are able to pay such charges or any part thereof, an order to such effect shall be entered. If the court finds that neither the patient's estate nor said relatives are able to pay the charge for transportation to and hospitalization in a state hospital, such costs shall be borne by the state of Washington. If the court finds that neither the patient's estate nor above relatives can pay charges for detention pending proceedings or court costs, such costs shall be borne by the county. When a patient is a resident of another county, the committing county shall recover from the county of the patient's residence all costs and expenses of the patient's detention and commitment.

**REVISED CODE OF WASHINGTON 72.23.120.**

Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: *Provided, however,* The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization.

**REVISED CODE OF WASHINGTON 71.02.330.**

Modification of order requiring payment. The superior court may, upon petition, modify any existing order entered pursuant to RCW 71.02.230, where it is shown that the petitioner is unable to continue payment of hospitalization charges. A hearing may be had on such petition in the nature of proceedings supplemental to execution in civil actions. Such petition must be served on the department at least ten days prior to hearings.

**REVISED CODE OF WASHINGTON 71.02.340.**

Modification of order to require payment by relative. The department may apply for modification of any existing order where it is shown that there

exists some relative within the classification set forth in RCW 71.02.230 who is able to pay hospitalization charges. Such relative must be served with notice of such petition in the same manner as summons is served in civil action.

#### REVISED CODE OF WASHINGTON 71.02.350.

Transportation charges—Collection. The department shall have the right to collect hospitalization and transportation charges from a patient's estate or person legally responsible for the support of a patient without the entry of any order to such effect under RCW 71.02.230. If the person administering the patient's estate or the person responsible for the support of the patient is unable to pay such charges he shall petition the court for an order declaring such inability pursuant to RCW 71.02.330.

#### REVISED CODE OF WASHINGTON 71.02.410.

How computed. Charges for hospitalization of patients in state hospitals are to be based on the actual cost of operating such hospitals for the previous year, taking into consideration the overhead expense of operating the hospital and expense of maintenance and repair, including in both cases all salaries of supervision and management as well as material and equipment actually used or expended in operation as computed by the department. Costs of transportation shall be computed by the department.